<u>मा. महाअधिवक्ता यांचे मत गुप्त ठेवणेबाबत.</u>

महाराष्ट्र शासन

सामान्य प्रशासन विभाग

शासन परिपत्रक क्रमांकः संकीर्ण २०१५ / प्र. क्र. ४९ / का. १८ (र. व का.)

मंत्रालय, ६३१ (विस्तार), मादाम कामा मार्ग, हुतात्मा राजगुरु चौक

तारीख: ३ जून, २०१५

शासन परिपत्रक :

मा. मुंबई उच्च न्यायालयातील रिट याचिका क्रमांक २५३५ / २०१३ मध्ये मा. उच्च न्यायालयाने दिनांक २६ फेब्रुवारी, २०१५ रोजी आदेश देताना न्यायालयीन प्रकरणांमध्ये मा. महाअधिवक्ता यांचेकडून शासनास प्राप्त झालेले कायदेशीर अभिप्राय हे संबंधित विभागाने गुप्त न ठेवल्याबद्दल तीव्र नापसंती व्यक्त केली आहे. सदर आदेशाची प्रत सोबत जोडली आहे. तद्नुषंगाने पुढीलप्रमाणे कार्यवाही करण्यात यावी.

१) मा.महाअधिवक्ता यांनी न्यायालयीन प्रकरणी दिलेले कायदेशीर अभिप्राय हे उघड करण्यात येऊ नयेत.

२) केवळ अतिशय महत्त्वाच्या अशा सार्वजनिक हिताच्या प्रकरणांमध्ये जर मा. महाअधिवक्ता यांचे अभिप्राय उघड करणे, विभागास आवश्यक वाटत असेल, अशा प्रकरणी विधी व न्याय विभागाचे अभिप्राय घेऊन योग्य ती कार्यवाही करावी.

सर्व विभागांना असे निर्देशित करण्यात येते की, मा. उच्च न्यायालयाच्या उपरोक्त आदेशानुसार काटेकोरपणे पालन होईल, याची दक्षता घेण्यात यावी. तसेच हे आदेश त्यांच्या प्रशासकीय नियंत्रणाखालील सर्व कार्यालयांच्या निदर्शनास आणावे.

सदर शासन परिपत्रक महाराष्ट्र शासनाच्या www.maharashtra.gov.in या संकेतस्थळावर उपलब्ध करण्यात आला असून त्याचा संकेताक २०१५०६०४१७२३१६२००७ असा आहे. हे परिपत्रक डिजीटल स्वाक्षरीने साक्षांकित करुन काढण्यात येत आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने.

Prem Singh Meena

Digitally signed by Prem Singh Meena
DN: c=IN, o=all india services, ou=IAS, postalCode=110003, st=New Delhi, cn=Prem Singh Meena
Date: 2015.06.04 17:26:38 +05'30'

(डॉ. पी. एस. मीना)

अपर मुख्य सचिव (प्र.सु. र. व का.)

प्रत,

१. मा. विरोधी पक्षनेता, विधानसभा / विधान परिषद, महाराष्ट्र विधानमंडळ सचिवालय, मुंबई,

२. सर्व विधानमंडळ / संसद सदस्य, महाराष्ट्र राज्य,

३. मा. राज्यपालांचे सचिव,

४. मा. मुख्यमंत्र्यांचे प्रधान सचिव,

५. सर्व मंत्री / राज्यमंत्री यांचे खाजगी सचिव / स्वीय सहाय्यक,

६. शासनाचे मुख्य सचिव यांचे वरिष्ठ स्वीय सहाय्यक,

७. शासनाचे सर्व अपर मुख्य सचिव / प्रधान सचिव / सचिव,

८. प्रधान सचिव, विधानमंडळ सचिवालय, विधान भवन, मुंबई,

९. सर्व मंत्रालयीन विभाग, त्यांना विनंती करण्यात येते की, उपरोक्त सूचना त्यांनी त्यांच्या सर्व क्षेत्रिय कार्यालयांच्या निदर्शनास आणाव्यात.

१०.महासंचालक, माहिती व जनसंपर्क महासंचालनालय, मुंबई,

११.सर्व विभागीय आयुक्त,

१२.सर्व जिल्हाधिकारी,

१३.सर्व जिल्हा परिषदांचे मुख्य कार्यकारी अधिकारी,

१४. सामान्य प्रशासन विभागातील सर्व कार्यासने,

१५. निवड नस्ती (कार्यासन १८)

Shiv

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2535 OF 2013

Reliance Infrastructure Ltd. & Anr. .. Petitioners.
Vs.
The Municipal Corporation of Greater Mumbai & Ors. .. Respondents.

Mr.Prasad K. Dhakepalkar, Sr. Counsel i/b Mulla & Mulla and Craige Blunt and Caroe for the Petitioners.
Mr.S.U. Kamdar, Sr. Counsel a/w Ms.K. R. Punjabi for the Respondent Nos.1 to 3.
Ms.Geeta Shastri AGP for the State.

CORAM : A.S. OKA & A.K. MENON, JJ.

DATED : 26TH FEBRUARY, 2015

P.C.

1. Heard learned senior counsel for the petitioners, the learned senior counsel for the first, second and third respondents, and learned AGP for the State.

2. Today, this petition is listed to consider an issue whether a written opinion given by the learned Advocate General of the State to the State Government is confidential. In the present case, along with the letter dated 6th May 2014, the Urban Development Department of the State Government forwarded a copy of the written opinion of the learned Advocate General to the Commissioner of Mumbai Municipal Corporation. A copy of the said letter dated 6th May 2014 has been procured by the petitioners alongwith a copy of the opinion

of the learned Advocate General. Both the documents have been annexed to his petition.

3. Learned senior counsel appearing for the petitioners states that the petitioners will remove the copy of the opinion of the learned Advocate General which is placed on record. We, accordingly, grant leave to amend. Amendment to be carried out within three weeks.

4. Today, an affidavit has been filed by Shri Avinash Patil, Joint Secretary, Urban Development Department, the Government of Maharashtra which is affirmed on 25th February, 2015. Paragraph 5 of this affidavit discloses that the stand of the State Government is that in this case, the Government may not claim privilege under section 129 of the Indian Evidence Act, 1872. It is stated that the Government will not claim privilege in every case. Perhaps the officer concerned has not understood the larger issue involved in this case. Learned AGP has tendered across the bar, an opinion in writing submitted by the learned Advocate General. The opinion of the learned Advocate General is that as a general principle, the legal opinions are usually meant for the Government and not for the strangers. He has opined that as a general principle, the legal opinions shall remain confidential except in the cases of overwhelming public interest. He has opined that normally the Government should not disclose the opinion. The learned Advocate

General has stated that disclosure of such opinion should be strongly discouraged except in the cases of significant public interest. Improper or excessive disclosure would lead to possible misuse and to loss of frankness which would be detrimental to the Government. We agree with the views expressed by the learned Advocate General in the said written opinion. We, therefore, deprecate the stand taken in paragraph 5 of the affidavit of Shri Avinash Patil, Joint Secretary of the Urban Development Department. We direct the State Government to circulate a copy of this order to all departments of the State. We are of the considered view that unless it is required do be disclosed considering the overwhelming public interest, the legal opinion of the learned Advocate General must be kept confidential. We are of the view that if the opinions of the learned Advocate General are disclosed, it would be detrimental to interests of the State Government itself. It is in the interest of the State that a constitutional functionary like the learned Advocate General gives a frank and candid opinion on all issues. Apart from circulating a copy of this order to all the departments, a copy thereof be forwarded to the Chief Secretary of the State Government to enable him to issue the appropriate directions.

5. Learned senior counsel appearing for the Municipal Corporation states that if the architect of the petitioners discloses the name of the employee or employees who have provided a copy of the document to him, the Municipal Corporation will certainly hold

an inquiry. Learned senior counsel appearing for the petitioners pointed out from the affidavit tendered today that a copy of the said document has been furnished even under the Right to Information Act, 2005.

6. Considering what is stated in paragraph 3 of the affidavit of Shri Surendra R. Khot, Authorised Signatory of the first petitioners, we direct the petitioners to disclose the names of the employee or employees from whom M/s.Sapre and Associates had obtained a copy of relevant document. The disclosure shall be made by a communication addressed by the Advocate of the petitioners to the advocate representing the Municipal Corporation. In view of what is observed above, no further directions are required on the aforesaid aspect.

(A.K. MENON, J.) **(A.S. OKA, J.)**